

10353

I N A S S E M B L Y

May 23, 2016

Introduced by M. of A. GOTTFRIED -- read once and referred to the
Committee on Codes

AN ACT to amend the criminal procedure law, in relation to vacating
convictions for offenses resulting from sex trafficking, labor traf-
ficking and compelling prostitution

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative intent. The purpose of this legislation is to
2 strengthen protection for the victims of sex trafficking, labor traf-
3 ficking, compelling prostitution and trafficking in persons, who are
4 convicted of a range of offenses as a result of that trafficking or
5 compelling. New York's landmark law offering the vacating of convictions
6 for prostitution-related offenses that were a result of this trafficking
7 has been the model for laws in more than half of the states. However,
8 several states wisely offer this relief to victims who may be compelled
9 to participate in other offenses as well. This legislation would follow
10 that example. Granting relief under this provision has always been based
11 on consideration of the circumstances and the interest of justice; this
12 legislation reiterates that.

13 S 2. Paragraph (i) of subdivision 1 of section 440.10 of the criminal
14 procedure law, as amended by chapter 368 of the laws of 2015, is amended
15 to read as follows:

16 (i) The judgment is a conviction where [the arresting charge was under
17 section 240.37 (loitering for the purpose of engaging in a prostitution
18 offense, provided that the defendant was not alleged to be loitering for
19 the purpose of patronizing a person for prostitution or promoting pros-
20 titution) or 230.00 (prostitution) or 230.03 (prostitution in a school
21 zone) of the penal law, and] the defendant's participation in the
22 offense was a result of having been a victim of sex trafficking under
23 section 230.34 of the penal law, labor trafficking under section 135.35
24 of the penal law, aggravated labor trafficking under section 135.37 of
25 the penal law, compelling prostitution under section 230.33 of the penal
26 law, or trafficking in persons under the Trafficking Victims Protection
27 Act (United States Code, title 22, chapter 78); provided that

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 (i) a motion under this paragraph shall be made with due diligence,
2 after the defendant has ceased to be a victim of such trafficking or
3 compelling prostitution crime or has sought services for victims of such
4 trafficking or compelling prostitution crime, subject to reasonable
5 concerns for the safety of the defendant, family members of the defend-
6 ant, or other victims of such trafficking or compelling prostitution
7 crime that may be jeopardized by the bringing of such motion, or for
8 other reasons consistent with the purpose of this paragraph; [and]

9 (ii) official documentation of the defendant's status as a victim of
10 trafficking, LABOR TRAFFICKING, AGGRAVATED LABOR TRAFFICKING, compelling
11 prostitution, or trafficking in persons at the time of the offense from
12 a federal, state or local government agency shall create a presumption
13 that the defendant's participation in the offense was a result of having
14 been a victim of sex trafficking, LABOR TRAFFICKING, AGGRAVATED LABOR
15 TRAFFICKING, compelling prostitution or trafficking in persons, but
16 shall not be required for granting a motion under this paragraph;

17 (III) A MOTION UNDER THIS PARAGRAPH, AND ALL PERTINENT PAPERS AND
18 DOCUMENTS, SHALL BE CONFIDENTIAL AND MAY NOT BE MADE AVAILABLE TO ANY
19 PERSON OR PUBLIC OR PRIVATE AGENCY EXCEPT WHERE SPECIFICALLY AUTHORIZED
20 BY THE COURT; AND

21 (IV) THE GRANTING OF A MOTION UNDER THIS PARAGRAPH SHALL BE DETERMINED
22 BY THE COURT IN CONSIDERATION OF THE CIRCUMSTANCES AND THE INTEREST OF
23 JUSTICE.

24 S 3. This act shall take effect immediately; provided that subpara-
25 graph (iii) of paragraph (i) of subdivision 1 of section 440.10 of the
26 criminal procedure law, as added by section one of this act, shall take
27 effect on the sixtieth day after it shall have become a law.